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Prevention of Corruption in State Administration: France

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France is a unitary state though with a partial administrative and political decentralisation since the eighties. In accordance with the principles of the rule of law and respect for human rights and fundamental freedoms, French public officials work in three public services – the central or State administration, the local or territorial authorities and the public health sector. This paper only addresses the prevention of corruption in State Administration.

The French system of prevention of corruption in state administration relies historically on principles and regulations (I), but new institutions have come to reinforce the existing framework to better prevent corruption and improve controls (II).

I. The predominantly legal and administrative approach for the prevention of corruption

To ensure public sector ethics and prevent any form of corruption the French system relies essentially on principles, public rules and obligations. The principles are present in the Declaration of the Rights of Man and the Citizen of 26 August 1789 stating that citizens should decide on the need for a public contribution and require of every public agent to be accountable of his administration (articles 14-15-16). The public rules and regulations (*Statut de la Fonction publique*) adopted in 1946 and amended in 1983-1984, define obligations and duties, breaches of which are heavily sanctioned, and take the form of preventive provisions. They avoid any situation that could lay public servants open to a breach of the law or a conflict of interest.

The first obligation is the exclusive performance of duties. It prohibits public servants from working in the public and the private sector at the same time. The current regulation is worded as follows :

“Civil servants shall devote their professional activity exclusively to the performance of the duties that are assigned. They may not engage in a gainful private professional activity of any kind. The conditions in which exceptions may be made to this prohibition on a exceptional basis shall be established by a decree of the Council of State.”¹

This obligation applies not only to civil servants but also to officials under contract and members of the ministerial cabinet. Exceptions to this rule are laid down by a regulation of 1936, and cover teaching activities related to an official’s competencies, scientific and technical research, as well as literary and artistic work. The public servant needs to get authorisation from his/ her hierarchy and has to declare any money earned.

In the case of violation of this rule, disciplinary sanctions are imposed ranging from a single warning up to dismissal. It is true that some administrations have staff with a status that enables them to take advantage of exceptions allowed under the decree of 1936. The reduction of working time combined with low levels of pay can increase the risks of staff engaging in a private activity in certain administrations. Nevertheless, the principle of exclusive performance remains a widely accepted fundamental principle.

The second obligation is the requirement of disinterestedness. It means that public servants derive undue advantage from their work. This requirement is worded as follows:

“Public servants may not have, either directly or through a third party, interests in a company that is subject to supervision of the administration to which they belong, or related to this administration which would be liable to compromise their independence.”²

¹ Article 25, General provisions of the General Statute of the Public Service - 1946.

² Decree N°95-168 of 17 February 1995

The third obligation deals with incompatibilities; it seeks also to avoid any form of partiality in public decision-making. We will address it later in the second part of this paper in particular when describing the *Ethics Commission* designed to prevent conflict of interest.

Beside these three obligations, specific checks are carried out on public authorities, *a priori* and *a posteriori*. *A priori* checks in administrative internal procedures also play a part in preventing conflict of interest and /or corruption in particular on transparency and administrative accountability, like the “double-key” system, used to separate roles, for example : accounting officers versus officials with power to authorise expenditure. *A posteriori* the court of auditors (*Cour des comptes*) and regional chambers of auditors (*Chambres régionales des comptes*) examine the accounts of public authorities.

Prevention through Criminal Sanctions is another way to deter corruption. Public servants who fail to maintain propriety in performing their duties are subject to severe criminal sanctions as laid down in the Criminal Code that punishes active and passive corruption, trading in influence, extortion, as well as misappropriation of public funds. These sanctions are supplemented by preventive provisions described as *crime deterrents* as for example a regulation outlawing the *unlawful obtaining of an advantage*. In addition to the exclusive performance of civil servants required under the statute, public servants, as by definition anyone involved in public decision-making is bound by provisions of the Criminal Code. It outlaws illegal taking of interest in order to avoid any suspicion of partiality in the performance of duty of public officials and to prevent any conflict of interest from arising. The sanctions are severe - up to 5 years of imprisonment and 75 000 euros in fines.

Employment in the public service includes provisions to prevent risks of corruption or breach of duties. It concerns recruitment, training and mobility.

To avoid nepotism recruitments in state administration is mainly operated by competitive examination. This legal procedure is considered to offer numerous safeguards for both the officials themselves and the users of public services. It is intended to ensure compliance with the principles of equality, neutrality and impartiality that you expect from the public services.

Initial and in-service training is used to inform public servants of the fundamental and ethical rules governing their conduct throughout their careers. Such training also inform them of their criminal liability. The *Service central de prévention de la corruption* (SCPC) provides training sessions to educate officials about the risks of corruption in particular those involved in at-risk situations or who are likely to uncover corruption in the course of their duties.

In areas of risks of corruption there is a system of mandatory mobility. It concerns more particularly senior state officials and senior management of the Ministry of Finance or Public Works . The mobility is also mandatory not only for the prevention of corruption but also for a better administration in particular the use of secondment for officials required to take decisions with significant financial implications, those concerned only stay in post for a limited time.

Transparency and obligation of communication in government are established in various laws, regulations, in particular in the Act n°2000-321 of April 2000 on Citizen's rights in their relations with government. The Commission on access to administrative documents (CADA) monitors the application of the legislation. It plays an important part and makes sure that individuals are entitled to see administrative documents. It ensures transparency in government bodies and private ones receiving public funding or serving the public interest. The use of new technologies such as the Internet has made also government more transparent.

Beside the Criminal code, specific regulations are also available and play an important rôle in order to prevent fraud and corruption. In France a number of professions have codes of ethics (called in French: *Déontologie*). This is the case of architects, dental surgeons, physicians and midwives, pharmacists and veterinarians. These codes, which are approved by the government, define professional responsibilities of its members, in particular with regard to relations with customers, patients and other members, as well as the various ways of exercising the profession. These codes of ethics apply fully also to any member that has civil service status. For example, civil servants who are physicians or architects are simultaneously subject both to the statutory rules of the civil service as well as to the rules of ethics specific to their profession (peer “justice”).

What concerns other parts of the civil service, there are various codes of ethics formally approved by the government: The Code of Ethics of the National Police, the Code of Ethics of the Ministry of Public Works and Housing, as well as the Code of Ethics of the Ministry of Finance, to name just a few. These codes provide a closer look at risks of specific ethics breaches, as well as at good practice to avert them, particularly regarding conflict of interest situations. These codes are distributed to all relevant staff and are discussed in training sessions in order to make everybody fully aware of these issues.

From 1946 onwards, various rules and regulations began imposing restrictions on the movement of civil servants to the private sector. A comprehensive legislation was set up in 1993, creating special Ethics commissions (*Commissions de Déontologie*). It became mandatory for public officials to consult these commissions before any move to the private sector. Recently the legislation has been changed, in the *2007 Act on Modernization of Public service*, the time within the rules apply governing the departure to the private sector, has decreased from five to three years, but sanctions, in case of breach of these rules, have been reinforced up to a risk of jail and a fine up to 30 000 euros, more than twenty times what it used to be.

The prohibitions to move to the private sector all into two categories:

- The first reiterates the prohibitions set out in the Criminal Code: Public officials who leave the public service permanently or temporarily may not work for a company that they have controlled or supervised, or with which they have negotiated or signed contracts on behalf of public authorities during the previous five years. As in the Criminal Code, the prohibition also extends to public corporations doing business in the competitive market. The prohibition also covers enterprises in the same group with a minimum of 30% public stake. The prohibition applies, since February 2007, for three years after an official's permanent departure from the civil service. In the event of temporary leave of absence, it applies for the full duration of that leave.
- The second category is more recent. Public officials are prohibited from exercising a private activity if, by its nature or the conditions under which it is exercised, it risks undermining the dignity of their former administrative duties or compromising day-to-day operation, independence or neutrality of the department in question. The duration of this prohibition is the same as in the first category. These provisions have been phased in gradually.

II. The pre-existing framework has been reinforced since the 90ies to improve prevention of corruption in State administration.

The institutional system for the prevention and control of corruption in France is complex and dispersed. The institutions and bodies can be split up in two categories according their functions: prevention and control

Prevention

The *Service central de prévention de la corruption* (SCPC), set up in 1993, is an interministerial body reporting to the minister of Justice and the Prime minister. It centralises the information required to detect and prevent offences involving, inter alia, active or passive corruption and the corruption of private company managers or staff, undue advantage, extortion, trading in influence. It also provides assistance, at their request, to the judicial authorities investigating such offences and to a defined list of various authorities. SCPC issues opinions on measures liable to prevent such offences and recommendations to the Government. Through its annual report SCPC has made an inventory of risks area where corruption can flourish, has proposed analysis and recommendations in order to prevent such risks. SCPC also offers training module to government services for example for control bodies in order to help them to detect fraud and corruption, drawing up diagrams of risks and lists of indicators of fraud making it possible to identify, demonstrate and prove fraudulent arrangements. Beside these actions SCPC implements training sessions in public schools (*Ecole Nationale d'administration (ENA)*, *Ecole Nationale de la Magistrature (ENM)*, Schools of Police, *Gendarmerie*, Customs, Tax and Control services (Defence, Finances) and Universities (Strasbourg, Poitiers, Aix en Provence...)

Controls

Most of controls are enforced within ministries and government departments through ministerial

inspectors, in particular the *Inspection Générale des Finances* (IGF) of the ministry of Finance, the *Inspection Générale de l'Administration* (IGA) from the ministry of Interior, and the General directorate for competition and consumer protection office, (DGCCRF) of the ministry of Finance. Moreover each ministry has its own inspectorate dealing with the promotion of good administration and through internal controls searching for misadministration, fraud and corruption.

Other types of controls are external but come under the authority of public bodies. These *a posteriori* controls can be administrative and performed by the Prefects and administrative Courts. They can be financial, in that case, controls are enforced by the Regional Chambers of Audit (*Chambre régionales des comptes*) or the Court of Audit (*Cour des comptes*) for the state administration.

Finally, Parliamentary controls can be implemented during ad hoc boards or enquiries when necessary.

Beside this framework, three **Ethics Commissions** (*Commissions de Déontologie*) were set up in 1995, one commission for each public service (central, territorial and public health).

The review of the general statute and specific regulations through specialized institutions like the ethics commissions appeared to be necessary because of a particular context. By the end of the 1990s, many companies that had been nationalized in the 1980s had returned to the private sector. This posed the serious problem of public officials accepting positions in the very same companies with whom they had had to deal while working in ministerial departments. At the same time because of ongoing decentralization, local elected officials became more involved in the economic life of their regions and communities which led to potential situations of conflict of interest arising at that level.

These three commissions have recently merged in one commission following the provisions of the 6 February 2007 Act on « *Modernisation de la fonction publique*. »

The commission is chaired by a member of the Council of State (*Conseil d'Etat*), with a member from the Court of Audit, as well as three other qualified persons sitting on the board. Members are appointed by decree for a renewable period of three years.

Cases are referred to the commission by the respective administrative authority employing the official who wants to go to the private sector, either on leave of absence or upon permanent departure. Exceptionally, public officials may also refer their own case to the commission in order to prevent any delay in case of conflict with the administrative authority.

The commission has one month to give an opinion. The case file must include three documents: The official's application giving details of former public duties as well as future private activities, an assessment form completed by the administrative authority indicating its view, as well as the regulations governing the official's public statute, together with the regulations of the private entity. The file is then forwarded to an independent "rapporteur" that organizes a meeting between stakeholders. At this meeting, the discussion touches solely upon ethics, not on other departure-related issues, for instance, on how to fill the position of the person to leave. The commission can give a favourable opinion, with or without restriction(s), or an unfavourable opinion.

The administration is not obliged to follow the commission's opinion. It can justify its decision by other reasons than ethical grounds. But in practice, the commission's opinions are followed in almost every case.

Since 1995, the Ethics commissions help to give public servants a clearer idea of what constitutes conflict of interest handing down more than 5000 opinions a year on movements of civil servants to the private sector. Progress has been made concerning retired public officials seeking new job opportunity in the private sector, and public servants going to decentralised institutions.

Conclusion

The French system of prevention of corruption in state administration is scattered and complex. It is the result of a progressive construction through time and experiences. The general framework has been reinforced in the nineties after political scandals and cases of corruption related to public procurements. Within this framework there are multiple actors, many of whom have more than one rôle. Although France

does not have a single agency compassing all aspects of corruption from prevention to enforcement, there are specialized bodies dealing with prevention (SCPC), controls (inspectorates) and conflict of interests (Ethics commission). The well-tested rules, regulations and procedures governing ethics, transparency and supervision apply in the various branches of the French public service. And the successive recent public servic reforms have laid great stress on quality service, accountability and ethical requirements. One aspect is still may be lacking is a better cooperation between the different bodies in terms of training.